

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of the estate of MARY E. DAWSON and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Cincinnati, Ohio

*Docket No. 97-501; Submitted on the Record;
Issued November 2, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the employee's recurrence of disability commencing October 17, 1993 was causally related to her accepted condition of aggravation of spinal stenosis and lumbar spondylosis.

The case has been on appeal previously.¹ In a May 1, 1996 decision, the Board noted that the employee filed a claim for lower back pain and a bulging disc which she related to continuous bending, heavy lifting and pushing at work. Dr. Russell P. Clarke, a Board-certified orthopedic surgeon, reported that a computerized axial tomography (CAT) scan showed a left-sided disc bulge and spinal stenosis at L4-5. He diagnosed spondylosis of the lumbar spine with past sciatic irritation and spinal stenosis. Dr. Clarke indicated that these conditions had existed for a long period and were not caused by factors of the employee's employment. He concluded that the employee's employment had aggravated her condition, causing symptoms in her back and leg. Dr. Clarke commented that the aggravation was not temporary, indicating that he did not expect the employee's symptoms to cease or expect her to become able to work at any job requiring prolonged standing, lifting or stooping. The Office of Workers' Compensation Programs accepted the employee's claim for aggravation of underlying stenosis, L4-5 and underlying spondylosis and began payment of temporary total disability compensation.

The employing establishment offered the employee a position as manual distribution clerk which had been approved by Dr. Clarke. The employee accepted the offer and returned to work on October 16, 1993. She stopped working after one shift and filed a claim for recurrence of disability. The Office denied the employee's claim. The Board noted that Dr. Clarke had subsequently concluded that the employee could not perform the duties listed in the job description, noting that she had chronic pain due to spinal stenosis. Dr. Clarke also reported that the employee apparently had a herniated lumbar disc. The Board found that the case should be

¹ Docket No. 94-1726 (issued May 1, 1996). The history of the case is contained in the prior decision and is incorporated by reference.

remanded for further development. The Board instructed the Office to determine whether the residuals of the employee's accepted employment-related injury prevented her from performing the manual distribution job she returned to on October 17, 1993; whether a new and distinct condition was the cause of her chronic pain complaints which precluded her from performing the offered position; and whether the employee had sustained a herniated disc which compromised her spinal canal at the time of her employment injury.

The employing establishment informed the Office that the employee had died on December 11, 1995 due to stomach cancer. The Office indicated that the employee had returned to part-time work on March 1, 1995 but stopped again the next day. She returned to limited duty, four hours a day, on April 8, 1995 and stopped again on August 4, 1995.

The Office referred the employee's case record to Dr. Norman Pollak, a Board-certified orthopedic surgeon for his review and opinion on whether the employee could have performed the light-duty position offered to her. In a July 3, 1996 report, Dr. Pollak indicated that there was no distinct indication on magnetic resonance imaging (MRI) or CAT scans that the employee had a herniated disc although there were indications of mild degenerative changes and some spinal stenosis at L4-5. He noted that after the employee's initial complaint, she was given light duty where she worked on an intermittent basis. Dr. Pollak concluded that the employee's complaint was likely an aggravation of the previous existing condition due to her job duties. He stated that she could have subsequently performed the light-duty work described by the Office subsequent to her injury. In a July 18, 1996 report, Dr. Pollak, in response to the Office's questions, stated that the diagnosis of spinal stenosis was not job related as there was no history of work-related injury. He commented that whatever problems the employee had did not preclude her from doing part-time work as a distribution clerk with work modifications made to ease her symptoms. Dr. Pollak stated that he was not aware of a distinct diagnosis of herniated disc nor were there medical indications in medical records of a distinct diagnosis of herniated disc.

In an August 19, 1996 decision, the Office rejected the employee's claim on the grounds that the employee was not totally disabled beginning October 17, 1993 as a result of the January 21, 1991 employment injury.

The Board finds that the case is not in posture for decision.

The Board had remanded the case to the Office for further development of whether the residuals of the employee's employment-related condition prevented her from performing the duties of the position she returned to on October 17, 1993, whether a separate and new condition was the source of her chronic pain complaints which precluded her from performing the accepted condition and whether she had a herniated disc at the time of the employment injury. Dr. Pollak, in his reports, only gave conclusions in response to these issues, that is, appellant could have performed the duties of the offered position and that there was no evidence of a herniated disc. Dr. Pollak gave no explanation on how he concluded that the employee could have performed the duties of the position which the employee returned to on October 17, 1993. He also did not explain how he determined from the medical evidence that the employee did not have a herniated disc. The reports of Dr. Pollak therefore do not contain any rationale in support of his

conclusions and, as a result, have limited probative value. The case must therefore be remanded again to resolve these issues.

On remand, the Office should request from Dr. Pollak an explanation of a rationale for his conclusions that the employee could have performed the duties of the light-duty position offered to her and that she had no herniated disc causally related to her employment. After further development as it may find necessary the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated August 19, 1996, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
November 2, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member